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DISTRIBUTION II

The attached is from today's Star.

Judicial Scrutiny of CIA Widened

By Allan Frank
Washington Star Staff Writer

CIA efforts in court to keep documents secret for "national security reasons" must be subjected to more severe judicial scrutiny, the U.S. Court of Appeals here has ruled.

The rulings yesterday in two companion cases also raise the possibility that judges may now probe more deeply into CIA activities to determine whether activities the agency wants to keep secret are in fact "lawful."

The appeals court ruled that in Freedom of Information Act cases, U.S. District Court judges now may be expected to privately review documents the CIA had claimed were exempt from judicial examination.

In the two FOIA cases, District Court judges declined to examine contested documents in private. The appeals court yesterday sent the cases back to the lower court.

BOTH APPEALS opinions, written by Judge Harold Leventhal and joined by Judge Edward A. Tamm, also carried opinions, concurring in part, by Chief Judge J. Skelly Wright, who urged even stronger standards of review of non-disclosure claims by government agencies.

In one case in which former State Department officer John D. Marks sued the CIA for release of documents about himself, District Judge Howard F. Corcoran declined to review four withheld documents.

Marks left the State Department to work for Sen. Clifford Case, R-N.J., and to co-author "The CIA and the Cult of Intelligence" with former CIA official Victor Marchetti.

In both the Marks case and one involving Ellen L. Ray and William H. Schaap, two persons who sued the CIA to learn whether they were among the 10,000 citizens included in CIA domestic surveliance files, the CIA claimed documents were exempt from disclosure for several reasons.

The CIA argued that some documents were exempt because disclosure would harm national security and would unlawfully reveal confidential sources.

THE APPEALS COURT said that neither Corcoran, nor District Judge John H. Pratt, who heard the Ray case and also declined to review documents in chambers, had required the CIA to be specific enough in affidavits and other documents about its claims for nondisclosure.

Marks argued that records about a CIA investigation of him could not be held secret based on the CIA's contention that disclosure would reveal aspects of a lawful national security intelligence investigation.

In fact, the appeals court noted, "what plantiff Marks craves is a broad ruling that the CIA'S national security investigation of him was in violation of law."

The appeals court said the lower court, in reviewing the case, may look thoroughly into the question of whether the CIA had the right to place Marks under surveillance because the agency believed he was unlawfully seeking to disclose official secrets.

WRIGHT, IN criticizing Leventhal's majority opinion as not going far enough in forcing disclosure of CIA documents, wrote, "Our inquiry here must focus on the lawfulness of the CIA's investigation of appellant (Marks) . . . Judge Leventhal's formulation is disturbingly open-ended; it seemingly invites CIA investigations of employees of other agencies, so long as they have a CIA clearancee somewhere in their backgrounds.

"The potential for abuse in an investigation of someone in Marks' position is all too obvious and exemplifies the kind of danger Congress resolved to avoid by limiting the CIA'S domestic investigative authority," Wright continued. "The majority opinion nonetheless pirouettes through this veritable mine field of troubling eventualities without confronting the spectre of CIA investigations of key legislative aides."

In the Ray case, the appeals court said that District judges should review CIA claims that whole documents must remain classified without a breakdown of the documents' contents.

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